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In The Supreme Court of the United States

October Term 1951

No. 678

MICHAEL LIVANOS, MICHAEL PAGONIS, PANAGIOTIS GRIGORIADIS, PANTELIS GIAKOUMIS, LAKARIAS VATOUGIOS, DIMITRIOS KYRIACOS, EVANGELOS LIASKOS, PANAGIOTIS SFEKAS, GEORGE TSAKONAS, MICHAEL KONDOUDIS AND VASSILIOS KOULOUBARITSIS,

Petitioners,

versus

GEORGE M. PATERAS, AS MASTER: GEORGE JOHN PATERAS AS MASTER: VASILIOS PATERAS AND VASILIOS PATERAS, GEORGE M. PATERAS AND GEORGE JOHN PATERAS, TRADING AS VISILIOS PATERAS AND BROTHERS, AS OWNERS: S. LIVANOS AND COMPANY, LIMITED: AND STAVROS LIVANOS, INDIVIDUALLY, TRADING, ETC. AS OPERATING AGENTS, ALL BEING INTERESTED IN THE OPERATION OF THE GREEK STEAMSHIP "DIRPHYS",

Respondents.

ON OPPOSITION TO PETITIONERS APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOURTH CIRCUIT

Hughes, Little & Seawell
(Thomas M. Johnston)
Proctors for Respondents

Norfolk, Virginia
April 21, 1952.

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BRIEF FOR RESPONDENTS

This petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit is filed by eleven

Greek seamen who seek to have this Court consider and reverse various findings of fact which have been determined adversely to the petitioners both in the District Court for the Eastern District of Virginia and in the United States Court of Appeals for the Fourth Circuit.

The issues of law involved have been fully dealt with by this Court on several occasions, and the Courts below have correctly applied and faithfully followed this Court's decisions in arriving at their conclusions in this case.

This Honorable Court has consistently refused to grant writs of certiorari in cases involving strikingly similar legal issues to the ones set forth in petitioners brief.

Maleuris et al v. *Papadakis et al*, 175 F. (2d) 730, Certiorari denied 338 U.S. 894, 70 S. Ct. 241

Emanuil Neapolidis et al v. *The Theofana Maritime Co., Ltd., et al*, 192 Va. 90, 63 S. E. (2d) 795, Certiorari denied 72 S. Ct. 36, 96 L. Ed. 34

NOTE: The parties hereto will sometimes be called "libellants" and "respondents", as they appeared in the Trial Court.

I. STATEMENT

This suit was originally instituted by eleven Greek seamen against the master, owners and operating agents of the Greek Steamship DIRPHYS. In the various libels and intervening libels filed in this case on July 13, September 18, and December 31, 1948, and January 18, 1951, these seamen claimed damages for false arrest, illnesses, illegal detention by Immigration Authorities and wrongful withholding of seamen's books, as well as indemnities

under Greek law for wrongful discharge, long service bonuses under Greek Collective Agreement, maintenance, repatriation, wages, overtime, extra pay, illegal advances, and waiting time under Title 46 U.S.C.A. Section 596 et seq. The total amount claimed by libellants was in excess of $125,000.00.

After numerous motions, discovery proceedings, pre-trial conferences and Court appearances extending over more than two years, this case was tried in the District Court on January 18, 19 and 22nd, 1951. (See original record on Appeal, pp. 1-263).

The District Court entered a decree on March 15, 1951 (App. 8, 9) making the following awards to the libellants:

(A) For illegal advances to the eleven libellants in February of 1948 at Newport News,	$2,217.00
(B) For damages to Liaskos by virtue of respondent's master's mistake in failing to include his name on vessel's crew list,	150.00
(C) For additional overtime due Liaskos	40.00
(D) For additional overtime due Pagonis	18.14

This decree denied recovery to the libellants on the numerous other claims asserted in the libels filed on their behalf. The awards made to these seamen were deposited in the registry of the District Court by the respondent and that Court's decree of March 15, 1951 paid over the full amount of the awards to the libellants.

From the decree of the District Court, the libellants appealed this cause to the United States Court of Appeals

for the Fourth Circuit where the case was argued on October 8, 1951, and decided November 5, 1951 (Appellate Court's Decision, App. 1). The Court of Appeals affirmed in every respect the decision of the District Court.

Petitioners sought a rehearing in the Court of Appeals which was denied. Upon the failure of the petitioners to obtain a stay of the enforcement of the Appellate Court's judgment, mandate was returned to the District Court affirming that Court's decree of March 15, 1951.

II. FACTS

All of the libellants were employed on the steamship DIRPHYS between February 7th and 11th, 1948, at Newport News, Virginia. The claims asserted by these eleven seamen are alleged to have arisen aboard the DIRPHYS on an extended voyage which began in Newport News, Virginia, in February, 1948, thence to various South American ports, thence through the Canal Zone and across the Atlantic to Rotterdam, and finally back to Newport News where the voyage ended in July of 1948 (App. p. 10).

While the vessel was in Rotterdam, Holland, Livanos, Grigoriadis, Vatougios, Giakoumis and Tsakonas were removed from the DIRPHYS by the Rotterdam Police acting in compliance with the orders of the Greek Consul and the Greek Port Master of that City. (Findings of Fact, App. p. 11; Dep. Pateras, App. p. 20). The accounts of these five libellants were promptly settled and all compensation then due and owing them was paid at Rotterdam. (Findings of Fact, App. p. 15). Immediately after the arrest and removal of these five men, the libellants

Pagonis, Kouloubaritsis and Kondoudis deserted the vessel. (Dep. Geo. J. Pateras, App. p. 24, 25; Findings of Fact, App. p. 15).

The other three libellants, Kyriakos, Liaskos and Sfekas remained aboard the vessel and rounded out the voyage, returning to Newport News, Virginia on or about July 13, 1948. (Dep. Geo. J. Pateras, App. p. 26).

On arrival in Newport News, the libellants Kyriakos and Sfekas complained of illness and were hospitalized where they received proper medical attention and were paid the wages and maintenance to which they were entitled. (Findings of Fact, App. p. 15; Dep. Chauncey, App. p. 45, 47, 48).

Liaskos, on arrival at Newport News, was detained for several days by Immigration Officials because of the respondents neglect to include his name on the DIRPHYS crew list, but the "error was promptly corrected." (Findings of Fact, App. p. 11; Testimony of Pateras, App. p. 32, 33).

All three of the libellants who returned to Newport News "freely terminated their employment upon completion of the voyage" (Findings of Fact, App. p. 11).

With the exception of two inadvertent clerical errors in computing the overtime of Liaskos ($40.00) and Pagonis ($18.14), the wage accounts of all libellants were settled promptly and punctually. (Findings of Fact, App. p. 14).

Advances totaling $2,217.00 were made to the libellants in Newport News, Virginia, in February of 1948; the District Court awarded the libellants these advances and the amount of the award was promptly paid to the libellants by the respondents. The money paid to libellants in Cristobal, Canal Zone, on May 31, 1948, had been earned. (Findings of Fact, App. p. 13).

III. ARGUMENT

A. The Petitioners Have Failed to Present Valid Reasons for Invoking the Jurisdiction of the Supreme Court of the United States.

The required statement disclosing the basis upon which it is contended that this Court should assume jurisdiction to review the judgments and decrees of the Court of Appeals and the District Court, with the exception of a reference to Title 28 U.S.C.A. Sec. 1254, is entirely lacking. (Petition for Writ, page 2).

The fact is, the petitioners seek a writ of certiorari because they object to the findings of fact of the Courts below. The various issues stated at pages 1-4 of the petitioners' brief have all been considered fully by both courts below and decided adversely to the libellants. The decisions of the lower courts are amply supported by the evidence.

This Court will not question the findings of fact of the District Court and the Court of Appeals unless they are clearly in error and are not supported by substantial evidence.

Mahnich v. Southern S.S. Co., 231 U. S. 96, 64 S. Ct. 455

Alabama Power Co. v. *Ickes*, 302 U. S. 464, 58 S. Ct. 300

Texas & N.O.R. Co., v. *Brotherhood etc.* 281 U. S. 548, 50 S. Ct. 427

The DEMOSTHENES (4 Cir.), 189 F. (2d) 488

Bradshaw v. The Virginia (4 Cir.), 176 F (2d) 526

The burden is on the petitioners to show error in the judgments of the Courts below.

Higgins v. *Carr Bros Co.* 317 U. S. 572, 62 S. Ct. 337

B. The Libellants Have Been Awarded and Paid All Illegal Advances Which They Received.

Under the District Court's decree of March 15, 1951, the libellants were awarded $2,217.00 for illegal advances made to them in Newport News, Virginia, in February of 1948, shortly after they joined the ship. (Findings of Fact, App. p. 12). These advances were paid into court by respondents and by the final decree were distributed to the libellants.

There were no illegal advances to the libellants in Cristobal, Canal Zone; the money paid to these seamen in that port had been earned.

Only four of the eleven libellants testified in this case concerning the money paid in Cristobal. Liaskos stated that after the advance in Newport News he got whatever money he had "worked for, not in advance", of the time when it was earned. (Dep. Liaskos, App. p. 58).

Sfekas testified that the payment which he received in the Canal Zone had been earned. (Dep. Sfekas, App. p. 59).

Giakoumis and Kyriakos stated that they received less money in Panama than was due them. (Dep. Giakoumis, App. p. 58; Dep. Kyriakos, App. p. 59).

Such admissions are conclusive against the party making them.

Massie v. *Parker* (6 Cir.), 128 F. (2d) 99
Mitchell v. *Swift & Co.* (5 Cir.), 151 F. (2d) 770
State Farm Mutual Auto Ins. Co. v. *Bonacci* (8 Cir.), 111 F. (2d) 412.

The case of *Crew* v. *Nelson* (1948), 188 Va. 108, 49 S. E. (2d) 326, at page 328, states the Virginia rule:

> "Where a litigant testifies unequivocally to facts within his knowledge and upon which his case turns, he is bound thereby and cannot rely upon other evidence in conflict with his own testimony to strengthen his case."

Moreover, the testimony of Captain Pateras bears out the testimony of these witnesses (Dep. Pateras, pp. 96-97):

> "Q. Now, how long had these various men been aboard when that ship was in Panama?
>
> A. About four months.
>
> Q. Was the money that was paid to each of these claimants a payment on wages that they would earn in the future or on wages that they had already earned?
>
> * * * * *
>
> A. That money was already earned because they had four months aboard."

The District Court disallowed any claim for advances in the Canal Zone (Memorandum, App. p. 13). The action of the Court in so doing is amply supported by the evidence.

C. The Libellants Are Not Entitled to Double Wages Under Title 46 U.S.C.A. Section 596 Et Seq.

The memorandum of the District Judge, which was

adopted as the Court's statement of its findings of fact and conclusion of law, dealt with the question of "waiting time" in the following language:

> "For the overtime and advances allowed by the Court there will be no additional allowance for "Waiting Time". 46 U.S.C.A. et seq. It cannot be said that any of this money was withheld without cause . . . ." (App. p. 14).

Proctors for the libellants contend that it was *mandatory* for the Trial Court to award waiting time in this case. It is submitted that such a contention wholly disregards the terms and meaning of the law.

> ". . . . Every master or owner who refuses or neglects to make payment in the manner hereinabove mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay. . . ." (46 U.S.C.A. 596).

In each case it must be determined *from the facts* whether the delay in the payment of wages is arbitrary, willful or unreasonable. (*McCrea v. United States* (1935), 294 U. S. 23, 55 S. Ct. 291.

Opposing proctors cite *Venides v. United Greek Shipowners Corp.* (2nd Cir.), 168 F. (2d) 681, and *Mavromatis v. United Greek Shipowners Corporation* (1st Cir.), 179 F. (2d) 310, as authority for the proposition that the libellants were entitled to an award for "waiting time" *as a matter of law.* Both of these cases dealt with awards of the statutory penalty for the unlawful deduction of compulsory savings from seamen's wages. In both of these cases, the deductions were made *with full knowledge of the fact that they had been held unlawful.* The decisions were predicated on the fact that the respondent, United Greek Shipowners Corp., had full knowl-

edge of the decisions of the Courts in *Glandzis v. Callinicos* (2nd Cir.), 140 F. (2d) 111 and *Lakos v. Saliaris* (4th Cir.), 116 F. (2d) 440.

In the instant case the illegal advances involved were made in February of 1948, long before litigation in the case of *Maleuris et al v. Papadakis et al.* (4th Cir.), 175 F. (2d) 730, had progressed to the stage where advances on future earning under such circumstances had conclusively been held to be unlawful and recoverable as wages.

Captain Pateras had no knowledge of the American law concerning advances on future earnings. (Pateras Dep., p. 257):

> "A. I do not know the American Law. That is for why I made the reductions. When the Court finds that they were right then they'll be paid their wages."

This deposition was taken in December of 1948. It was not until the following year that the Court decided that such advances were illegal. (*Maleuris et al v. Papadakis, et al*, supra).

It is both the Greek law and Greek custom to grant advances to Greek seamen when they are employed on Greek vessels. (Dep. Pateras, App. p. 40; Greek Collective Agreement of 1943, Sec. P.(1), Dep. C. N. Clinia, Exhibit "A").

"Sufficient cause" under the double pay statute need not amount to a valid legal defense to a claim for wages.

Collie v. Fergusson (1930), 281 U. S. 52, 50 S. Ct. 189.

Bender v. Waterman S/S Corp. (3rd Cir.), 166 F. (2d) 428.

Opposing proctors also argue that the failure of respondents to pay certain overtime due the libellants Liaskos ($40.00) and Pagonis ($18.14) constituted a withholding of wages "without cause". The Trial Court concluded that "The errors in the overtime calculations were apparently inadvertent clerical mistakes." (Memorandum opinion, App. p. 14).

The testimony of Captain Pateras clearly shows that the $40.00 error which he made in the Liaskos account was innocent and unintentional. It was a mistake about which even Liaskos himself did not complain when he settled his account. (Dep. Pateras, p. 261):

> "A. It may be a mistake. He was present when he received the money and accepted it.
>
> Q. Didn't he complain bitterly that you were doing him out of over 100 hours of overtime?
>
> A. No, he did not make any."

As to the mistake in the account of Pagonis, amounting to $18.14, Georgilis, Chief Engineer, testified as follows (Dep. Georgilis, p. 340):

> "A. I made a mistake; to add to his account four pounds and ten shillings because his account was made at sea and the captain called me and I made — I was in a hurry to make his account and forgot when Pagonis was not aboard the steamer.
>
> Q. When did you first discover that you made that mistake?
>
> A. Today."

Pagonis was one of the seamen who deserted the vessel in Rotterdam. He has never testified in this case.

The libels filed on behalf of Liaskos and Pagonis claim sums greatly in excess of the amounts awarded.

Liaskos' claim for overtime is in excess of $240.00. In addition both men claim numerous other items of wages, extra pay, bonuses, etc., under both Greek and American law. The respondents had a right to an adjudication of the claims made by these seamen. The fact that the Trial Court awarded only a small percentage of the amounts claimed testifies to the respondents' good faith in defending the case.

O'Hara v. Luckenbach S/S Co. (9th Cir.), 16 F. (2d) 681.

The petitioners' contention that there is a conflict of decisions of the United States Courts of Appeal for the Second and Fourth Circuits is not valid. The *facts* of each case are determinative of the question as to whether or not penalties will be allowed. The legal principle applied by the Courts is identical. The evidence in the instant case fully support the District Court's finding that the withholding was *not* without sufficient cause.

D. The Respondents Did Not Procure the Arrest of the 8 Libellants Who Left the Ship in Rotterdam.

The Trial Court concluded that Livanos, Grigoriadis, Giakoumis, Vatougios and Tsakonis were arrested on the order of the Greek authorities in Rotterdam, Holland; they were not accused of crimes, nor was their arrest procured by the respondents. (Memorandum Opinion App. p. 11).

This finding is abundantly supported by the evidence in this case. In the words of Captain Pateras "They were taken by the Greek Government after orders to the Greek Port Master of Rotterdam and the Greek Consul of Rotterdam." (Dep. Pateras, p. 15).

The Greek Consul boarded the DIRPHYS, held an investigation and then "called the Master and he told him to make their accounts and let them go off the steamer." (Dep. Pateras, p. 19). After these five men were notified by the Consul to leave the vessel their accounts were prepared by the master; the men refused to accept their accounts (App. p. 21, 22) and refused to leave the ship. (App. p. 23, 24). On orders of the Consul they were removed from the ship by the Rotterdam police. (App. p. 24). The accounts and seamen's books of these men were left with the ship's agents and Greek Consul. (App. p. 24).

The master's version of the Rotterdam incident is supported by the ship's log.

Of the five men who were removed from the vessel by Greek authorities, only one (Giakoumis) has testified in this case. His testimony concerning the Rotterdam incident is as follows (Dep. Giakoumis, p. 23):

"Q. There were five of you men who were ordered by the Greek Consul to leave the ship, isn't that correct?

A. Yes.

Q. And those men were Michael Livanos, Grigoriadis, Vatougious and you, Giakoumis, and Tsakonas?

A. Yes, sir.

* * * * *

Q. And after receiving his order, you went back aboard the ship, is that correct?

A. Yes, sir.

Q. When you got aboard the ship, the five of you told the master you weren't going to leave the ship, didn't you?

A. Yes.

Q. Now, you know the reason that the Greek Con-

sul told you to leave the steamship DIRPHYS, don't you?

A. I do not know anything absolutely."

These five libellants have failed to offer any competent evidence to substantiate their claim that respondents accused them of crimes and procured their arrest.

Pagonis, Kouloubaritis and Kondoudis left the vessel with the five seamen who had been removed by the Greek Consul. (App. p. 25). They left the ship knowing that she was ready to sail. (App. p. 25), and against the orders of the Master of the vessel. Under the circumstances they were guilty of deserting the vessel. (App. p. 15, 16).

(Dep. Gikoumis, p. 38):

"Q. Those three men weren't taken from the ship by the police? They came aboard (the launch) of their own accord?

* * * * *

A. Yes, the captain did not allow them to leave the boat.

Q. And they left anyway?

A. Yes, they come with us and all together we were put in jail."

The deserters did not ask for their accounts or their seamen's books. (App. p. 25, 26). The seamen's books were left with the police for delivery to Greek authorities (App. p. 26). Within several days the deserters' accounts were cabled to the Greek Consul at Rotterdam. (App. p. 27, 28).

Not one of the three libellants who deserted the vessel in Rotterdam have testified in this case. There is no competent evidence to substantiate their claim of false

arrest or unjustified discharge. Having thus failed to carry their burden of proof, their claims in this respect were properly denied.

Pennsylvania R. Co. v. Chamberlain, 288 U. S. 333, 53 S. Ct. 391

Reliance Life Ins. Co. v. Burgess (8th Cir.), 112 F. (2d) 234.

Darden v. Murphy, 176 Va. 511, 11 S. E. (2d) 579.

E. All Wages to Which the Libellants Are Entitled Have Been Paid.

1. The five men removed by Consul.

As has been seen, the five seamen who left the vessel at Rotterdam on the orders of the Greek Consul refused to accept their money from the captain of the DIRPHYS. (App. p. 21, 22). Their accounts were delivered to the ship's agents and the Greek Consul (App. p. 24). Moreover, these men received their wages.

(Dep. Giakoumis, pp. 36, 37):

"Q. And you were paid off in front of the Greek Consul were you not, according to this account which was left (indicating libellants' Exhibit No. 1)?

A. They sent us that money in jail before the last minute we were going to leave.

Q. And you got that money that this account shows, didn't you?

A. They gave us this money in guilders, 18 pounds, 18 shillings in guilders."

Giakoumis was the only one of these five seamen who testified.

2. The Deserters.

The other three seamen, Pagonis, Kondoudis and Kouloubaritsis, who deserted the vessel at Rotterdam are not entitled to further payment of wages; they had been paid in the Canal Zone around June 5th and deserted the vessel on June 27, 1951. Their action in deserting the vessel forfeited the wages which they had earned. 46 U.S.C.A. 701.

Aside from the question of desertion, however, the evidence shows that Captain Pateras cabled the accounts of these men to the Consulate of Greece at Rotterdam (App. p. 27, 28). Not one of these three seamen have appeared to testify that they did not receive payment in accordance with these accounts.

3. The Three Men Who Returned to the U. S.

The wage accounts of Liaskos, Sfekas and Kyriakos were settled when the vessel returned to Newport News on July 13, 1948. (Accounts of Liaskos, App. p. 60; Sfekas, App. p. 62; and Kyriakos, App. p. 61).

Aside from the clerical errors in calculating overtime due Liaskos and Pagonis, dealt with above, the numerous other claims of the libellants for extra pay and overtime are not supported by the evidence. (Memorandum opinion, App. p. 13, 14):

> "No amount has been proved as due any of the libellants for extra work. Liaskos' claim for $0.35 per day for passengers carried has not been established.
>
> There is no sum due libellant Kyriakos for wages from Rotterdam to Newport News. The evidence fails to show the validity of any such claim."

It is submitted that the Court's conclusion in this respect is well founded. (Dep. Pateras, App. p. 29).

F. The Libellants Are Not Entitled to Indemnities or Bonuses Under Greek Law.

The numerous claims of these eleven seamen for indemnities for wrongful discharge are totally unsupported by the evidence. Their separation from the DIRPHYS was of their own making.

The indemnities under Article 361 of the Greek Commercial Code and the Greek Collective Agreement (i.e., 4 months wages, etc.) are payable only when seamen are discharged "without justifiable cause."

Mavromatis v. United Greek Shipowners Corp., (1st Cir.), 179 F. (2d) 310.

The respondents did not discharge any of these seamen. The eight of them who left the DIRPHYS at Rotterdam have been previously dealt with. All three of the seamen who returned to Newport News left the DIRPHYS voluntarily. Kvriakos and Sfekas were not summarily discharged – they were hospitalized. (Paragraphs 2, 9, 13, Memorandum Opinion, App. p. 15).

(Deposition of Sfekas, p. 81):

"A. I left the ship at Norfolk on the 13th of last month, (July), because of illness."

(Deposition of Liaskos, p. 26):

"Q. You asked the captain to pay you off that steamer, didn't you?

A. Yes."

The long service bonus claimed by the libellants under the Greek Collective Agreement was discontinued in November of 1947, over two months *before these seamen even went aboard the DIRPHYS.* (Dep. C. N. Clinia, App. p. 74; Resp. Exhibit "B" Jan. 18, 1949; Paragraph 8, Memorandum Opinion, App. p. 28).

The three libellants who returned to the United States did not request repatriation. (Paragraph 10, Memorandum Opinion, App. p. 28). Deposition of Liaskos, pp. 33, 34:

> "Q. I ask you whether you would accept passage back to Greece in the form of a ticket?
>
> * * * * *
>
> A. Why do you give it to me?
>
> Q. I ask you the question. You're to answer, not to ask questions.
>
> A. No."

G. Respondents Furnished Kyriakos and Sfekas with Maintenance and Cure.

1. KYRIAKOS

The Trial Court found that Kyriakos was properly hospitalized. "His medical attention and hospitalization were paid for by his employer and he was paid in full all maintenance to which he was entitled." (Memorandum opinion, paragraph 2, App. p. 11).

Respondents witness W. B. Chauncey was heard at the trial of the case. He testified that Kyriakos was hospitalized, paid his base wage while in the hospital and paid full maintenance when he was released from the hospital. (App. p. 45). In fact the seaman signed a receipt for these payments. (App. p. 44, 45).

2. SFEKAS

The District Judge also concluded that Sfekas was hospitalized and his maintenance paid. (Memorandum Opinion, paragraph 13, App. p. 15).

Sfekas was hospitalized on two separate occasions. On July 23, 1948 competent physicians found no further hospitalization needed. (App. p. 47, 50). Testimony of W. B. Chauncey, p. 40:

> "Q. As a result of that hospitalization in Newport News in the Buxton Hospital, what, if anything, was paid Sfekas for the time he was in there?
>
> A. He stayed in the hospital nine days, and I paid him $21.60.
>
> * * * * *
>
> Q. What was the payment that was made to him after his discharge from the hospital?
>
> A. I gave him $21.60 as his base pay, plus $5.00 for transportation to Newport News the day that he came over.
>
> Q. When was he discharged from the Buxton Hospital?
>
> A. The 23rd of July, 1948."

This seaman had no period of disability following this hospitalization. He signed receipts for the amount paid to him. (App. p. 47). Subsequently on August 10, 1948, Sfekas was again hospitalized at respondents expense after obtaining certificates from Baltimore physicians to the effect that he needed an appendix operation. (App. pp. 47). He received his base pay while in the hospital. (App. p. 47).

Proctors argue that Sfekas has not been paid 21 days maintenance after the second discharge from the hospital, on August 26, 1948. Aside from the question of respon-

dents legal obligation to pay such maintenance after having a proper medical discharge from the Newport News hospital in July of 1948, there is no conclusive evidence that the maintenance in question was not paid. *Sfekas himself did not testify on the point.* It is just as reasonable to assume that he received payment from the New York Agents of the DIRPHYS as it is to assume that his maintenance was not paid. In the case of *Pennsylvania R. Co. v. Chamberlain* (1933), 288 U. S. 333, 339, 53 S. Ct. 391, 393, it is stated:

> "We, therefore, have a case belonging to that class of cases where proven facts give equal support to each of two inconsistent inferences; in which event, neither of them being established, judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover."

The Trial Court properly concluded that Sfekas was not entitled to further payments for maintenance.

The amounts paid during hospitalization were the base wages of the two men; this is in accordance with the provisions of the Greek Collective Agreement. (Paragraphs A and N(2), Greek Collective Agreement of 1943: Res. Exhibit A of Jan. 18, 1949).

IV. CONCLUSION

The respondents submit that the decisions of the United States Court of Appeals for the 4th Circuit and the United States District Court for the Eastern District of Virginia are eminently correct. The many and varied claims asserted by the petitioners were based on questions of fact which the Courts below resolved in favor

of the respondents; the decisions of the Courts below are based on ample and substantial evidence.

There is no real conflict of authority as to the basic points involved, no new or novel questions needing further clarification and no question of general interest warranting the granting of a writ of certiorari in accordance with the petitioners' application.

For these reasons the decrees of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Eastern District of Virginia, should not be disturbed and a writ of certiorari should be denied.

Respectfully submitted

THOS. M. JOHNSTON
Of Proctors for Respondents-Appellees

HUGHES, LITTLE & SEAWELL
Norfolk, Virginia
April 21, 1952

APPENDIX

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APPENDIX

OPINION OF UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MICHAEL LIVANOS, ET ALS,
Appellants,

versus

GEORGE M. PATERAS, ET ALS,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK. ADMIRALTY.

(Argued October 8, 1951. Decided November 5, 1951.)

Before PARKER and DOBIE, Circuit Judges, and WYCHE, District Judge.

Burt M. Morewitz and Jacob L. Morewitz (Morewitz & Morewitz on brief) for Appellants; and Thomas M. Johnston (Hughes, Little & Seawell on brief) for Appellees.

DOBIE, Circuit Judge:

This is a suit in admiralty by eleven Greek seamen against the master, owners and operating agents of the Greek steamship DIRPHYS. These seamen claimed damages for false arrest, illnesses, illegal detention by Immigration Authorities and wrongful withholding of seamen's books, as well as indemnities under Greek law for wrongful discharge, long service bonuses under Greek Collective Agreement, maintenance, repatriation, wages, overtime, extra pay, illegal advances, and waiting time under Title 46 U. S. C. A. Section 596 et seq. The total amount claimed by libellants is in excess of $125,000.00.

The District Court entered a decree on March 15, 1951, making the following awards to the libellants:

(a) For illegal advances to the eleven libellants in February of 1948 at Newport News, ... $2,217.00

(b) For damages to Liaskos by virtue of respondent master's mistake in failing to include his name on vessel's crew list, ... 150.00

(c) For additional overtime due Liaskos..... 40.00

(d) For additional overtime due Pagonis 18.14

This decree denied recovery to the libellants on the numerous other claims and libellants have appealed to us.

The libellants were all employed on the steamship DIRPHYS between February 7th. and 11th., 1948, at Newport News, Virginia. Their claims are alleged to have arisen aboard the DIRPHYS on a voyage which began in Newport News, Virginia, in February, 1948, continued to various South American ports, through the Canal Zone,

across the Atlantic to Rotterdam, and finally back to Newport News, where the voyage ended in July of 1948.

While the DIRPHYS was in Rotterdam, Holland, Livanos, Grigoriadis, Vatougios, Giakoumis and Tsakonas were removed from the DIRPHYS by the Rotterdam Police acting in compliance with the orders of the Greek Consul and the Greek Port Master of that City. The accounts for these five libellants were settled and compensation then due was paid to them at Rotterdam. Immediately after the arrest and removal of these five men, libellants Pagnois, Kouloubaritsis and Kondoudis deserted the ship. The other three libellants, Kyriakos, Liaskos and Sfekas remained aboard the vessel and completed the voyage, returning to Newport News on or about July 13, 1948.

On the arrival of the DIRPHYS in Newport News, the libellants Kyriakos and Sfekas complained of illness and were hospitalized where they received medical attention and were paid wages and maintenance. Liaskos, on arrival at Newport News, was detained for several days by Immigration Officials because of the respondents' neglect to include his name on the DIRPHYS crew list, but (as the District Judge found) the "error was promptly corrected."

All three of the libellants who returned to Newport News freely terminated their employment upon completion of the voyage. With the exception of two inadvertent clerical errors in computing the overtime of Liakos ($40.00) and Pagonis ($8.14), which were corrected in the decree below, the wage accounts of all libellants were settled promptly.

The libellants-appellants seek to have us review and reverse the District Court on issues of fact. The only relevant inquiry on this appeal is therefore whether the find-

ings of fact made by the District Judge were clearly erroneous.

A careful review of the record convinces us that these findings of fact were not clearly erroneous but, on the contrary, were supported by substantial evidence. So the decree below must be affirmed. We, accordingly, content ourselves with brief comments on what appear to be the more important contentions of the libellants-appellants.

As to the money paid to libellants in the Canal Zone, which libellants claim was in the nature of illegal advances, the District Judge found: "The libellants' evidence is that what was paid them at the Canal Zone had all been earned." This finding was amply sustained by the testimony of libellants Liaskos, Sfekas, Giakoumis and Kyriakos. It was further corroborated by the evidence of Captain Pateras of the DIRPHYS. See *Mitchell v. Swift & Co.*, 151 F. 2d. 770; *Massie* v. *Parker*, 128 F. 2d. 99.

The District Judge found: "For the overtime and advances allowed by the Court, there will be no additional allowance for Waiting Time. 46 U. S. C. A. 596 et seq. *It cannot be said that any of this money was withheld without cause.*" (Italics ours.) Libellants claim further that the failure of respondents to pay certain overtime due the libellants Liaskos ($40.00) and Pagonis ($18.14) constituted a withholding of wages "without cause". The District Judge found: "The errors in the overtime calculations were apparently inadvertent clerical mistakes." These two findings find ample support in the evidence of Captain Pateras and Chief Engineer Georgilis. Liaskos did not complain when his account was settled; Pagonis did not testify. See *O'Hara* v. *Luckenbach SS. Co.*, 16 F. 2d. 681.

As to the Rotterdam incident, the District Judge found:

"The eight (8) libelants, Livanos, Pagonis, Kondoudis, Kouloubaritsis, Grigoriadis, Giakoumis, Vatougias and Tsakonas were not accused of crime, and *their arrest was not procured at Rotterdam in June 1948, by the respondents.* Five of them, Livanos, Grigoriadis, Giakoumis, Vatougias and Tsakonas were arrested upon the order of the Greek authorities, and on their refusal to leave the vessel they were taken ashore by the police. The other three voluntarily joined them." (Italics ours.)

The italicized portion of this finding is adequately based on the testimony of Captain Pateras: "They were taken by the Greek Government after order to the Greek Port Master of Rotterdam and the Greek Consul of Rotterdam." His version of the incident is supported by the log of the DIRPHYS. Of the five men removed from the ship at Rotterdam, only Giakoumis testified, and his testimony was quite inconclusive:

"Q. There were five of you men who were ordered by the Greek Consul to leave the ship, isn't that correct?

A. Yes.

Q. And those men were Michael Livanos, Grigoriadis, Vatougious and you, Giakoumis, and Tsakonas?

A. Yes, sir.

* * *

Q. And after receiving his order, you went back aboard the ship, is that correct?

A. Yes, sir.

Q. When you got aboard the ship, the five of you told the master you weren't going to leave the ship, didn't you?

A. Yes.

Q. Now, you know the reason that the Greek Consul told you to leave the steamship DIRPHYS, don't you?

A. I do not know anything absolutely."

None of the three libellants who deserted the DIRPHYS at Rotterdam testified in this case. Libellants have thus failed utterly to substantiate their claims of false arrest or unjustified discharge. See, *Reliance Life Insurance Co.* v. *Burgess*, 112 F. 2d. 234.

Libellants claimed indemnities and bonuses under the Greek law. These are payable, under Article 361 of the Greek Commercial Code and the Greek Collective Agreement if, but only if, the seamen are discharged "without justifiable cause". The District Judge found: "None of the libellants can be classed as having been unlawfully discharged, and none of them is entitled to the provisions of Article 361 of the Greek Commercial Code." The District Judge further stated:

> "The libelants are not entitled to recover the long service bonus heretofore stipulated in the Collective Agreement. That part of the Collective Agreement was vacated by the Supplemental Agreement made in November, 1947, and the Court is of the opinion that the libelants are bound by this amendment."

These holdings, we think, were clearly correct. See, *Mavromatis*, v. *United Greek Shipowners Corp.*, 179 F. 2d. 310.

We next come to the claims of Kyriakos and Sfekas for maintenance and cure. As to Kyriakos, the District Judge found: "His medical attention and hospitalization were paid for by his employer and he was paid in full all maintenance to which he was entitled." A like finding was made as to Sfekas. The record discloses ample support for these findings, particularly in the testimony of W. B.

Chauncey, Cf. *Pennsylvania Railroad Co.* v. *Chamberlain*, 288 U. S. 333, 339.

The further claims of the libellants, beyond those allowed in the decree below, particularly for wages, were properly denied by the District Judge. We find no reason for adding to what was said in the opinion below, which divided the libellants into three classes: (1) Those removed from the ship at Rotterdam; (2) Those who deserted the vessel at Rotterdam; and (3) Those who returned with the DIRPHYS to Newport News.

The decree of the District Court is affirmed.

Affirmed.

DECREE OF DISTRICT COURT

(March 15, 1951)

This cause came on to be heard upon the pleadings and proofs, evidence and exhibits, and was fully heard and argued by proctors.

And the Court being of the opinion for the reasons stated in its written memorandum of February 26, 1951, which is filed with the papers as a part of the record in this case, that the numerous matters in dispute and controversies should be determined as follows:

1. As the result of a mistake, the respondents failed to include the name of the libellant Liaskos in the vessel's list of crew members, and the said libellant was detained

by Immigration Authorities at Newport News, Virginia; as a result of this detention, the libellant Liaskos was damaged to the extent of $150.00;

2. The respondents made a mistake in computing the overtime due the libellant Liaskos entitling him to recover to the extent of said mistake which amounted to $40.00;

3. The respondents made a mistake in computing the overtime due the libellant Pagonis entitling him to recover to the extent of said mistake which amounted to $18.14;

4. The libellant seamen are entitled to recover in full the advances made to them by the respondents at Newport News, Virginia, during the month of February, 1948, in the following amounts:

Name	*Amount*
Tsakonas	$200.00
Vatougias	200.00
Grigoriadis	150.00
Pagonis	200.00
Kyriacos	200.00
Sfekas	300.00
Liaskos	250.00
Kouloubaritsis	200.00
Livanos	200.00
Kondoudis	117.00
Giakoumis	200.00

5. That the libellants are not entitled to recover any of the other claims made by them for false arrest, illegal detention, maintenance and cure, unjustified discharge under the Greek or American law, wages, over-

time, extra pay, illegal advances other than those made at Newport News in February 1948, penalties or waiting time under Title 46 U. S. C. A. Sec. 596 et seq., long service bonuses, repatriation, withholding of seamen's book's, etc., as alleged in the various libels filed herein; DOTH SO DECREE.

And it appearing to the Court that the respondents have heretofore deposited in the registry of the Court the sum of $2425.14, which is the full amount awarded to the libellants, exclusive of costs, the Clerk of the Court is directed to draw his check upon the funds on deposit to the credit of this cause, in the amount of $2425.14 payable to Morewitz & Morewitz, proctors of record for the libellants herein.

And it appearing to the Court that all matters in controversy between the parties have been disposed of at the trial of this case, it is further ORDERED that the cause be removed from the docket, and that all bonds and stipulations given by any of the parties hereto be and the same hereby are released and cancelled.

And it is further ORDERED that the respondents shall pay costs consisting of the Clerk's and Marshal's fees, but all remaining costs will be divided equally between the libellants and the respondents.

ALBERT V. BRYAN,
United States District Judge

MEMORANDUM BY THE COURT

Dated Feb. 26, 1951

In this suit eleven (11) Greek seamen are seeking to recover damages, wages, overtime, illegal advances and waiting time and certain other moneys said to be payable under the Collective Agreement and the Greek Commercial Code relating to Greek seamen. All the claims arise from the voyage of the SS DIRPHYS, flying the flag of the Kingdom of Greece, on the voyage commencing in February 1948, at Newport News, Virginia, where all the libelants signed on, and ending at that port in July 1948, the vessel having proceeded from Newport News to the Argentine, thence through the straits of Magellan to Chile, up to the Canal Zone, thence to Rotterdam and finally to Newport News.

Eight of the libelants left the ship at Rotterdam, of whom 5 were ordered off and arrested by the Greek Government authorities—Michael Livanos, Pangiotis Grigoriadis, Pantelis Giakoumis, Laharias Vatougis, and George Tsakonas and the other three—Michael Pagonis, Michael Kondoudis, and Vasilios Kouloubaritsis—"jumped ship" and joined them on the tugboat carrying the arrested five.

The remaining three libelants—Evangelos Liaskos, Dimitrios Kyriacos and Panagiotis Sfekas—stayed on board until the DIRPHYS rounded out her voyage at Newport News.

Besides the original libel there are three intervening petitions. The last one, that of George Tsakouas, was not presented, apparently through inadvertence, until the hearing on January 18, 1951, when the Court allowed it to be filed without objection by the respondents.

On the formally pleaded causes of action and the many other issues the Court is of opinion as follows:

1. The eight (8) libelants, Livanos, Pagonis, Kondoudis, Kouloubaritsis, Grigoriadis, Giakoumis, Vatougias and Tsakonas were not accused of crime, and their arrest was not procured at Rotterdam in June 1948, by the respondents. Five of them, Livanos, Grigoriadis, Giakoumis, Vatougias and Tsakonas were arrested upon the order of the Greek authorities, and on their refusal to leave the vessel they were taken ashore by the police. The other three voluntarily joined them.

2. Libelant Kyriacos was not summarily discharged at Newport News but voluntarily left the ship and terminated his employment aboard her. When the ship arrived Immigration ordered him detained because he had contracted a venereal disease. He was first sent to the United States Marine Hospital, and on his request for a private hospital, he was sent to the Buxton Hospital in Newport News, where he was operated on for a bad appendix. His medical attention and hospitalization were paid for by his employer and he was paid in full for all maintenance to which he was entitled.

3. Libelant Liaskos was detained by the Immigration authorities at Newport News through the neglect of the respondents to include his name in the crew list. The error was promptly corrected, but the detention had continued for three days. For this the Court will allow him damages of $150.00.

4. None of the libellants was unjustly discharged. Five of them were discharged at Rotterdam, as aforesaid, on the order, and under the arrest, of the Greek Government; three of them jumped ship voluntarily; and

the other three, Liaskos, Kyriacos and Sfekas freely terminated their employment at Newport News upon completion of the voyage.

5. There was a mistake made in the computation of the overtime of the libelant Liaskos, and he is entitled to recover for 100 hours of overtime at the rate of $0.40 per hour. Similarly, there was an error in computing the overtime of libelant Pagonis and he is due £ 4.10 or $18.14. They will be decreed these amounts.

No amount has been proved as due any of the libelants for extra work. Liaskos' claim for $0.35 per day for passengers carried has not been established.

6. There is no sum due libelant Kyriacos for wages from Rotterdam to Newport News. The evidence fails to show the validity of any such claim.

7. Illegal advances of wages were made to the libelants at Newport News, Virginia in the following amounts:

Name	*Amount*
Tsakonas	$200.00
Vatougias	$200.00
Grigoriadis	$150.00
Pagonis	$200.00
Kyriacos	$200.00
Sfekas	$300.00
Liaskos	$250.00
Kouloubaritsis	$200.00
Livanos	$200.00
Kondoudis	$117.00
Giakoumis	$200.00

An award of these amounts will be made. There

are no other advances to be allowed. Taxes due the Greek Government were properly deducted and paid to the Government at London. If it had not been so paid, the vessel could not have received new articles for the next voyage.

The Court has disallowed any claim for advances at the Canal Zone. At the deposition of George John Pateras the libelants had him compute the amounts due the libelants when the vessel left the Canal Zone. These calculations, hastily and roughly made, showed that such amounts were in excess of what was actually paid them several weeks later at Rotterdam. From this their proctors argue proof of the advances at the Canal Zone. But this argument is not sound, for the master's calculations ignored the advances at Newport News and the incidental lawful deductions. The libelants' evidence is that what was paid them at the Canal Zone had all been earned. The Court has disapproved the Newport News advances, but it cannot also allow the libelants for advancements at the Canal Zone, because this would result in a duplication of the allowance.

George John Pateras also computed that in actuality a part of the moneys paid in Newport News had been earned and were therefore not all advances. However, the Court has not been satisfied on this contention and has allowed as advances the full amounts as shown on the wage accounts.

Therefore the Court will decree the libelants the balance of their earned wages after eliminating credits for the advances at Newport News.

8. The libelants are not entitled to recover the long service bonus heretofore stipulated in the Collective

Agreement. That part of the Collective Agreement was vacated by the Supplemental Agreement made in November 1947, and the Court is of the opinion that the libelants are bound by this amendment.

9. None of the libelants is entitled to the £ 20 discharge pay under the provisions of the Collective Agreement. As we have seen, 5 of the libelants were taken off of the ship by reason of their arrest by the Greek Government, and 3 voluntarily left with them at Rotterdam. The remaining 3 severed their connection with the vessel at Newport News at their own request. Although two of them received hospitalization, they were not discharged for illness.

10. As has already been indicated, none of the libelants can be classed as having been unlawfully or unjustly discharged, and none of them is entitled to the provisions of Article 361 of the Greek Commercial Code. As to the 3 libelants who completed the voyage and left the ship at Newport News, the evidence proves that they made no claim for repatriation and under the Greek law they were not entitled to repatriation without demand. Apparently they preferred to continue in the United States without repatriation.

11. For the overtime and advances allowed by the Court there will be no additional allowance for "waiting time." 46 USCA 596 et seq. It cannot be said that any of this money was withheld without cause. The errors in the overtime calculations were apparently inadvertent clerical mistakes. The wage accounts were settled promptly and there was no neglect or refusal to pay. Korthinos v. Niarchos, 175 F. 2d 730.

12. There has been no arbitrary or unjust failure to give to the libelants their seamen's books.

The Greek authorities took possession of the books, in such instances as they were taken, and this was not done at the instigation of the respondents.

13. The Court finds that the intervenor Sfekas was not deprived of maintenance and cure but on the other hand was properly cared for and his maintenance paid. He complained of illness when he arrived at Newport News in July 1948, was sent to the hospital and treated for tonsilitis, and soon released.

14. The libelants have been paid in full, with the exception of the overtime omitted in the two instances named, for all of their services and for all of their lawful claims against the respondents. Payment was made promptly and punctually.

In respect to the 5 libelants who were arrested at Rotterdam and removed from the ship by the Greek authorities, the evidence shows that all compensation then due and owing them was given them at Rotterdam. It was in Dutch guilders to an amount equivalent to the British currency due according to the wage accounts. The other 3 who left Rotterdam, abandoned the ship unlawfully and were in fact deserters, that is, Michael Pagonis, Michael Kondoudis and Vasilios Kouloubaritsis. The master of the DIRPHYS radioed their accounts to Rotterdam, after their desertion. They have no claim here, because they were paid in full at the port of call (the Canal Zone) next before Rotterdam, and by their desertion at Rotterdam they are barred of their claim in this suit. 46 USCA 701. The desertion was duly logged, but under the circumstances there was no opportunity to furnish and read

a copy of the entry to the deserters. 46 USCA 702 Cf. Koufouros v. Giannoutsos, 4 Cir. F. 2d 477.

15. The libelants filed numerous interrogatories and requests for admissions in this case. The information sought was not available in this country but was in the possession of the owners and agents of the DIRPHYS abroad, or in the knowledge of the several masters of the vessel during the period covered by the libel and intervening petitions. Answers were filed but they were verified only by the proctor for the respondents. Such practice is permissible under the Admiralty Rule No. 33. However, the libelants asked the Court to require personal verification by the respondents, objecting to a proctor's verification. At the insistence of the libelants the Court directed respondents' proctor to use his best efforts to obtain verification personally by the respondents. This direction was made in November 1950, and the Court fixed December 31, as the time for filing the personally verified answers. The Court is satisfied that the proctor made every effort to obtain such verification, but by reason of the circumstances he was unable to do so, and had not been able to do so, up to the date set for trial.

However, the Court thought it advisable to proceed with the trial of this case. It had been on the docket since July 1948. The libelants have had the advantage of full and complete examination of the first master, George John Pateras, who served on the vessel from Newport News to Rotterdam.* He was examined in detail for several days by the libelants. Moreover, the answers verified by the proctor gave additional information to the libelants. Numerous documents showing the accounts of the seamen, etc. have been produced. Furthermore, upon the conclusion of the three-day hearing in court, the Court

left the case open for a reasonable time to allow the procurement of the personally verified answers. Consequently the libelants were not in any wise prejudiced by proceeding to trial without awaiting the answers. The answers have now been filed and no further hearing of the case has been requested, proctor for the libelants having advised the Court at the pre-trial conferences on other cases, January 26, 1951, that he did not wish to be heard again and asked the Court to consider so much of the answers as were admissions against interest.

The other master was George M. Pateras. He assumed command of the vessel from Rotterdam to Newport News.* Libelants sought an order from the Court requiring George M. Pateras to appear in Norfolk or Newport News for examination. True, he is a respondent, but the Court refused the request on the ground that it would be an abuse of its power to order him to appear for examination. He has not sought this jurisdiction for the trial of his case, and has been willing to allow the case to proceed without delay on account of his absence. His occupation as a sea captain carries him into all parts of the world. To have directed him to Norfolk or Newport News, and at his own expense, although he was said to have been in New Orleans at or about the time of the trial of this case, would have been an undue hardship. The libelants had been furnished all reasonable information by the respondents and the Court felt that it was not justified in exacting anything further from the respondents, especially George M. Pateras.

16. The respondents will be ordered to pay the costs consisting of the Clerk's and Marshal's fees but the other costs will be divided equally between the libelants and the respondents.

*See Correction of Memorandum (App. p. 18).

17. This memorandum will be adopted by the Court as a statement of its findings of fact and conclusions of law, and proctors are requested to submit an appropriate decree.

(Sgd.) ALBERT V. BRYAN,
United States District Judge

CORRECTION OF MEMORANDUM BY THE COURT

In its memorandum dated February 26, 1951, the Court inadvertently stated on page 8, in the second paragraph, that the first master was George John Pateras, and that he served on the vessel from Newport News to Rotterdam. In truth, the first master was George M. Pateras and he served from Newport News to Rotterdam, but his testimony has never been taken. George John Pateras was the second master, serving on board from Rotterdam to Newport News, and his deposition was taken in full. A similar error appears on page 9, in the second paragraph, where George M. Pateras is spoken of as being the master from Rotterdam to Newport News. He was master from Newport News to Rotterdam. The other references to George M. Pateras are correct.

The Court is indebted to Mr. J. L. Morewitz for calling this discrepancy to its attention on March 16, 1951.

(Sgd.) ALBERT V. BRYAN,
United States District Judge

Alexandria, Virginia
March 19, 1951

Deposition of Pateras (pg. 9):

Q. You are Captain George John Pateras?

A. Yes, sir.

Pg. 10:

Q. You are the master of the steamship DIRPHYS?

A. Yes, now.

Q. Captain Pateras, what kind of a steamship is the DIRPHYS?

A. Liberty ship.

Q. How long have you held a master's certificate, Captain?

A. How long I have the certificate as master?

Q. Yes.

A. From 1929, 19 years.

Q. Did you know the five or five of the claimants or petitioners in this case whose names are Livanos, Grigoriadis, Vatougios, Giakoumis, and Tsakonas. Did you know these men when they were aboard the ship?

A. Yes.

Q. When did they come aboard the ship, sir?

A. About nine to ten, 11—different date every one.

Q. What month?

A. February.

Q. What year?

A. '48. 1948.

Pg. 14:

Q. Have you the crew articles with you showing the composition of the crew as of the day the men came aboard?

A. We sent it to the Mercantile Marine.

Q. Have you any copies of that?

A. No.

Pg. 16:

Q. Captain, do you have any knowledge of the reason that the Port Master in Rotterdam wanted these men? Do you know why he wanted them?

* * * *

A. No.

Q. Did you or, as far as you know, anyone on the ship or the ship's owner make any complaint about

Pg. 17:

these particular five men to the Greek Consul in Rotterdam or any other Greek Consul?

MR. J. L. MOREWITZ: Objected to unless this witness will give us the records to show what happened—the records relating to these men to show what happened to these men he now claims he had nothing to do with.

The question was read to the witness.

A. I did not make any complaints myself.

Q. You know if anybody else did?

A. I didn't know.

Q. Do you have any records in your possession concerning any such complaint as Mr. Morewitz just called for?

A. What kind of records?

Q. Any ship's records showing why the Greek Consular Office wanted these men or any other records showing what happened when the ship arrived at Rotterdam prior to the time the men were moved by the Greek Consul?

A. The only record is a telegram that come to the Greek Consul in Rotterdam and they come aboard the steamer for investigation.

Pg. 18:

Q. What did the Greek Consul do when he came aboard?

A. He called some of the men in a private room and he investigated.

Q. Did you hear him call some of the men in a private room?

A. Yes.

Q. Did the Greek Consul tell you the reason that he wanted to investigate or make an investigation about

Pg. 19:

these five men?

* * * *

A. No.

Q. At that time, did you make any complaint to the consul about these five men that we have been discussing?

* * * *

A. I only asked what's the reason and they say the Greek Government wants those men.

Q. After this investigation that you have mentioned, what happened?

* * * *

A. He called the master and he told him to make their accounts and to let them go off the steamer.

* * * *

A. Because he was going to take them off the articles and send them to Greece.

Q. Were you present and heard that yourself?

A. Yes.

Pg. 23:

Q. Now, what did these men say at that time, if they said anything?

A. We don't accept our account. We don't want to leave the steamer.

Q. At that time did the master offer them their account or not?

A. Yes.

Q. What did the master do then, if anything?

A. Then the master called the people at the Consulate and I was present myself at the Consulate.

* * * *

A. And the Consul told them that he received Pg. 24:

orders from the Greek Government to receive their account because they were discharged from the steamer.

Q. At that time the men were present too, is that correct?

A. Yes.

MR. BURT MOREWITZ: It's a leading question.

Q. What did the Greek Consul do then?

* * * *

Q. What did the Greek Consul do then, if anything?

A. The consul told them that I'm doing my duty and I have this orders from my government for you to go to Greece and if you have any demands on the steamer, when you go over to Greece then they can be settled over there and he offered them to pay their freight, their passage money.

Q. Where was this that this took place? Was it aboard ship?

A. At the Consulate.

Q. What did the men do after that time?

Pg. 25:

A. I heard them cursing the government and the Consul.

Q. Did they return to the ship and did you return to the ship or not?

A. I went aboard the steamer.

Q. Did the men come back aboard the steamer or not?

A. Yes, they come back.

* * * *

Q. Are you now the legal custodian of the log-book of the ship?

A. The other log book?

Q. Yes.

Pg. 30:

The log book was received in evidence and marked Respondent's Exhibit Number "A", for Indentification.

Pg. 40:

Q. Did those five petitioners to whom we have referred to return to the ship?

A. In the afternoon, in the evening, yes.

Q. How did they finally leave the ship?

MR. J. MOREWITZ: If this witness had anything to do with it or knows what happened of course that is one thing. Of course, if he's merely retelling to us what he understood the situation to be, we object.

MR. JOHNSTON: I think he can answer the question.

A. By force.

Q. What do you mean when you refer to "force".

* * * *

A. They did not want to leave the steamer and the Consul sent the police on board.

* * * *

A. They closed themselves in a room and the police broke in the door and took them and put them aboard the tugboat.

Pg. 43:

Q. What men did the police take ashore?

A. Five men.

Q. Who are those five men, Captain?

A. Michael Livanos, fireman, Giakoumis, Grigoriadis, Tsakonas, Vatougios.

Q. When they left the ship, what did you do to straighten out their account or pay them?

A. The other master delivered their accounts to the agents and to the Consulate.

Pg. 44:

Q. Were you present when the men were present when the other Captain offered them their pay when they refused it?

A. Yes, I was present also at the Consulate.

Q. How long was it before the ship sailed that these five men were taken from the ship by the police?

A. Between a half hour to one hour.

Q. What was done with the seamen's books of these five men?

A. They remained at the Consulate.

Pg. 45:

Q. In addition to these five men, did any other men leave the ship after these five were taken off by the police?

A. Yes.

Q. And who were they?

A. Pagonis, Kouloubaritsis, Kondoudis.

Q. Do you know why these three men left the ship?

Pg. 46:

A. The others called them to follow them.

Q. How long was that before the time when the ship was ready to sail?

A. Half an hour or an hour.

Q. Did you discharge those other three men, the three in addition who left?

A. No.

Q. Did the police arrest these three men or not?

A. There was no other means to go ashore so they went ashore with the tugboat of the police.

Q. Were they arrested by the police or do you know?

A. I don't know.

Q. Did they advise you, as the Master of the ship, whether they were leaving the ship for good or were returning or what their ideas were?

Pg. 47:

A. No.

Q. Were they advised by you that the ship was to sail within a half hour to an hour?

A. All the members of the crew knew that.

Q. Was this sailing time posted?

A. The pilot was on board, the flag of the pilot was hoisted and the tugboats were alongside.

Q. Now, were they paid at that time, were they paid anything upon their leaving the ship?

A. No, sir.

Q. Had any account been made up for the men?

A. No.

Q. How long before they left did you realize or know that they were going to leave?

A. I do not know at all.

Q. Where were these three men employed and about what dates were they employed?

A. Between the 9th and the 13th of February at Newport News.

Q. What was done with their seamen's books when they left the ship?

A. The officer of the police came on board and asked me for their books.

Q. Were these books turned over to the police or not?

Pg. 48:

A. I do not want to give them but the officer told me that I must give the books because the authorities would require them.

Q. Those three men come to you and requested their books or not?

A. No.

Q. Now, did the ship sail about a half hour to an hour after these eight men left?

A. Right away.

Q. When did you pay or let's say have you since these three men, Kouloubaritsis, Kondoudis, and Pagonis, left the ship paid the amounts due them at the end of their employment aboard.

A. I received a radiogram from the Consul of Rotterdam and I send their accounts by radiogram to the Consul too.

Q. I hand you this paper and ask you what it is, sir?

Mr. J. Mosiewitz: We object to anything except the original as seen by the Consul and then we'll probably object to it as a self serving declaration.

A. It is radiogram that the Consul of Rotterdam sent me.

Q. Does it give the date on there that it was received?

A. Yes.

Pg. 49:

Q. What date is that?

A. 30th of June, 1948.

Q. All right, sir. How many days was this received after the steamship left Rotterdam?

A. Three days.

Q. I hand you this and ask you to mark it Exhibit "B" for identification.

The telegram was received and marked Exhibit "B" for Identification.

Q. Read the telegram we have just introduced as Respondent's Exhibit "B".

* * * *

Mr. J. Monewitz: Move to strike as being incompetent, irrelevant and immaterial and rank hearsay and not binding on us.

A. (Reading) "To the Master of the DIRPHYS: SWCTPCH 634 STOP Make known Greek Consul Rotterdam balances of accounts of three men who left steamer last Sunday, that is Kondoudis, Pagonis, Kouloubaritsis, signed Theocharides."

Q. I hand you this paper and ask you what it is?

Pg. 50:

A. This is telegram that I sent myself to the Consul.

* * * *

Q. Was that in reply to the telegram that you had received?

A. Yes sir.

Q. What's the date of that telegram?

A. July 1, 1948.

MR. JOHNSTON: All right, sir, I'll hand you this and ask you to mark that Respondent's Exhibit "C".

The telegram was received and marked Respondent's Exhibit "C" for Identification.

MR. JOHNSTON: I'll save time by asking the interpreter to read it.

A. (Reading) "ANDRE THEOCHARIDES, Consulate of Greece, Parklon, 30, Rotterdam. Balances account of three men left steamer STOP Michael Kondoudis 13 pounds, shillings 1 and four pence STOP Vasilios Kouloubaritsis, pounds 16, shillings none, pence 11 STOP Michael Pagonis, pounds 6, shillings 10, pence none STOP Articles of vessel as deserters. Master Steamer DIRPHYS." Pg. 51:

Q. There were three more men who have sued the Steamship DIRPHYS whose names are Kyriacos, Liaskos, and Sfekas. When did they come aboard the ship, sir?

A. Eighth to tenth of February 1948.

Q. When did they leave the ship?

A. At Norfolk on July 13 about.

Q. Was that the voyage during which these five men were taken from the steamship and the other three men left the ship?

A. It was the return voyage to Norfolk.

Q. What was the capacity of Sfekas and his rate of wages, rate of pay?

A. Third engineer.

Q. Was he employed in that capacity?

A. Yes.

Q. Did he have an engineer's certificate, a third engineer's certificate or not?

Pg. 52:

A. No.

* * * *

Q. Did he receive a third engineer's salary during the entire time he was aboard or not?

A. Only from Rotterdam to Newport News received as apprentice.

Q. What was the reason for his change from a third engineer to an apprentice?

A. The Consul demoted him because he did not have a certificate.

Pg. 53:

Q. Did he (Sfekas) make any complaint to you during the voyage from Rotterdam to Newport News about a sickness?

A. No. He did not make any complaint. Only when we arrived in Norfolk he said he was sick and would go to a doctor.

Q. Do you know if he went to a doctor?

A. Yes, he went.

Q. Did he state to you the result of the medical examination that he had received?

A. He brought certificate from the doctor that told that he had tonsilitis.

Q. Did he indicate any intention to leave the ship at Newport News at the conclusion of that voyage?

Pg. 54:

A. Yes.

Q. When he indicated that he was leaving the ship, did you make up his pay account or not?

A. Yes.

Q. And did he receive his pay for the work that he had performed aboard the ship?

A. Yes, after the last day when he left the steamer on account of sickness he received his money and he signed.

Pg. 55:

Q. What about the petitioner, Kyriacos? Was he sick at any time during his services aboard the steamship?

A. He told me while at sea that he had venereal disease.

Q. When the ship got to Newport News?

A. To Norfolk.

Q. When the ship come to Norfolk, was this man examined by a doctor, Kyriacos?

A. When the ship arrived at Old Point, the sanitary authorities examined him and find the venereal sickness.

Q. What did you do after the doctor's examination of Kyriacos?

A. The immigration doctor detained him and sent to the Marine Hospital at Norfolk.

Q. Did you pay Kyriacos—what did you pay Kyriacos when he left the ship?

A. I paid him everything that was coming to him up to the last day.

Q. Did he execute a receipt for having received all this payment?

Pg. 56:

A. Yes.

Q. Did the payment include all overtime due him or not?

* * * *

A. Everything.

* * * *

Q. Now, what about the petitioner, Liaskos—when did Kyriacos leave the steamship DIRPHYS?

A. On the 13th of July, 1948.

Q. Now, there was another petitioner by the name of Liaskos?

A. Yes.

Q. Why, if you know, did Liaskos leave the steamship DIRPHYS?

A. He wanted to leave the ship.

Q. Did he so advise you?

A. Yes.

Q. When he left the ship, what did you pay him?

A. Everything that was coming to him and expenses and launch and everything.

Q. Did he request repatriation to Greece when he left the ship or not?

* * * *

A. No.

Pg. 57:

Q. Did you offer him any repatriation to Greece?

A. No, he wanted to stay in America so he didn't have to.

Q. Did he tell you whether or not he wanted to stay in America?

* * * *

A. Yes.

Q. Did the man sign a receipt for the various monies which you paid him?

* * * *

A. Yes.

Q. Now, Liaskos claims that you or the Master of the ship failed and refused to put his name on a crew list. What about that?

A. Yes, we don't refuse. It was a mistake.

Q. When the ship arrived in this country, what happened?

A. According to my log book, I told the immigration what happened.

Q. And what did the immigration say?

Pg. 58:

A. The immigration detained him. Then I told the immigration I signed that man aboard the steamer Newport News, Virginia and the immigration they said they were going to telephone to Washington to the authorities there to find out and then we let you know.

Q. Was Liaskos present at this time that this went on?

A. Yes, he was present. He came to protest.

Q. Now, what date was that, if you know?

A. The day of arrival.

Q. And what date was that?

A. On the 14th or 13th of July 1948.

Q. When did you again talk with the immigration about this matter?

A. We got the answer the next day from the immigration. He was free.

Q. Did the immigration come to you and advise you that he was a bona fide seaman or not?

A. Yes, and he also telephoned the agent. They also telephoned the agent.

Pg. 59:

Q. Did you advise Liaskos that he was no longer being detained?

A. Yes, I advised him.

Q. Was that the same date you received the advice from immigration or not?

A. Yes, same day.

Q. After that time, was Liaskos free to come and go aboard the ship as he wished?

A. I make his pay-off on his account and he left the steamer.

Q. Now, were these three men, Liaskos, Sfekas and Kyriacos given their seamen's books or not?

A. Yes, and I signed them.

Q. Did you make any entries in the seamen's books that were not true?

A. No, the two of them were discharged on account of sickness and the other one is discharged with—was in order.

Q. What do you mean by his "discharge was in order"?

A. Mutual consent.

Pg. 60:

Q. Liaskos claims that he is entitled to 600 hours of overtime at $.40 an hour which has not been paid and in addition that he has been entitled to $.35 per day per passenger for each passenger carried by the vessel

Pg. 61:

and he says that two passengers, that there were a total of 97 passenger days for which he was not paid. Were there any passengers aboard this vessel during that voyage?

* * * *

A. No.

Pg. 63:

Q. All of these men claim that they were entitled to various payments for extra work which they have performed aboard. Did they perform any extra work for which they were not paid?

* * * *

A. No.

* * * *

Q. Are all the times that they received extra payments shown in the various accounts that you have?

A. Yes.

Q. Kyriacos in his claim says that he is entitled to wages which were due him for 14 days that it took him to travel from Rotterdam, Holland where he was engaged to Newport News, Virginia where he became a member of the crew. Do you know whether Kyriacos was employed in Rotterdam?

Pg. 64:

A. He was paid for that as Assistant Engineer.

* * * *

Q. What was Kyriacos aboard ship, Captain?

A. For the beginning he go aboard the steamer?

Q. No. What was Kyriacos' capacity aboard the ship? What was he?

A. At the beginning he was second mate. But after—

* * * *

Q. Did he have a certificate as a second officer or not?

* * * *

A. He did not have any certificate and the Consul

told us he did not have certificate and we called somebody else to take his place.

Pg. 65:

Q. How did it happen that Kyriacos was replaced as second officer? I understood that to be your testimony.

A. Because another one came aboard from Greece with the certificate.

Q. Did Kyriacos remain on in the capacity which his certificate called for?

* * * *

A. No, he was called as an apprentice.

Q. Is that the capacity in which he was qualified?

• • • •

A. Yes.

Q. And he remained aboard as an apprentice?

A. Remained aboard.

Q. Did Sfekas remain aboard in the capacity which he was qualified?

MR. J. MOREWITZ: Same objection, move to strike.

Q. (Continuing) That is, apprentice?

A. Yes.

Q. I hand you this book and ask you what it is?

A. The payment of the wages, book for the payment of wages.

Pg. 66:

Q. Does that book cover the accounts of the 11 men who are suing the ship in this case?

A. Yes sir.

Pg. 75:

Q. Captain, was there anyone aboard who was not a member of the crew?

A. Never.

Q. Your wife was aboard, was she not?

A. Yes, my wife was on board but she had seaman's book and she was in the crew articles.

Q. And she was in the crew articles?

A. Yes.

Pg. 79:

Q. After this time when this photostat was taken, what happened to your book of articles for the ship?

Pg. 80:

Q. You give me the answer to that, will you Captain?

A. You mean the old articles?

Q. That's correct.

A. On arrival in London, as my own articles were expired, the Greek Consul took and took in the office for pay all the taxes; according to the Greek regulations every six months every ship is obliged to pay to the Greek Government the duty of the taxes.

Pg. 95:

MR. JOHNSTON: I submit the pay accounts of the 11 claimants in this case. (To the reporter) I hand you the pay accounts to which we have been referring and request that you mark the same as Respondents Exhibit "E" for Identification.

The pay accounts of the 11 claimants were received and marked Respondents' Exhibit "E" for Identification.

* * * *

Q. Captain, these accounts which have been identified by you and are marked as Defendants' Exhibits "E", contain the word "advances" on them in places. What does an advance mean under your account?

A. Any monies that we give the crew during, after, or before a voyage we call it advances in Greek.

* * * *

Pg. 96:

Q. Now, on each of the accounts, there is the notation of an advance or payment in Panama. What dates was the ship in Panama?

A. (Referring to log book) The exact date is in my other log book but I remember that it was about June 5.

Q. Is the other log book the book to which you referred earlier in your testimony as having been turned over to the Greek Consul or not?

A. Yes.

* * * *

Q. Now, how long then had these various men been aboard when that ship was in Panama?

A. About four months.

Q. Was the money that was paid to each of these claimants a payment on wages that they would earn in the future or on wages that they had already earned?

Pg. 97:

A. That money was already earned because they had four months aboard.

Pg. 101:

Q. All right now, when the articles were turned in to the Greek Consul by you, were the taxes due for the various members of the crew paid to the Greek or not?

MR. J. MOREWITZ: Objected to. The best evidence is the receipts for the taxes, if any exist.

A. Yes, they were paid then to the Consul.

Q. How do you know that, Captain?

MR. J. MOREWITZ: Same objection.

A. I know that because before I must bring the check to the Consul after the collections of the taxes.

MR. J. MOREWITZ: We again say the cancelled check would be the best evidence.

Q. Can you get new articles until the taxes are paid?

Pg. 102:

A. Never. If I don't bring the check to the Greek Consul, the Greek Consul never give a new articles.

Q. Is that paid in bulk or is it paid for each particular member of the crew by name?

• • • •

A. The Consul puts it in bulk and tells me what the sum is and I make out the check and take it to the Consul.

Pg. 109:

Q. Captain, that brings us down to the claims by these various men for overtime.

• • • •

Q. Do your accounts show what overtime was received by each of the various petitioners in this case?

A. Yes sir.

• • • •

Q. Were you familiar with the overtime earned by the various members of the deck department from February until they left the ship in July, I believe, or June.

A. Yes, it is in my knowledge.

Pg. 115:

The document was received and marked Respondents' Exhibit "I" for Identification.

Q. Which of these men left the ship on June 28, 1948?

Mr. J. Monaweetz: Already testified pretty fully with regard to that.

A. Tsakonas, Vatougios, Koudoulis, and Kyriacos after 28.

Q. They left on or after the 28th.

A. Kyriacos, Vatougious, Koudoulis left during the 28th, during or before. Kyriacos left in Norfolk.

Q. Where are the overtime records of Kyriacos from June 28 until the date that he left the ship, if you have any such records?

A. They are in that sheet of paper.

Q. I'm talking about from June 28 until the date that they left the ship. That's Kyriacos.

A. Kyriacos, after Newport News, Coronal two hours; Panama, three and a half hours; Coronal again, two hours; Rotterdam on arrival, ten hours.

Pg. 116:

Q. Yes, but did Kyriacos leave on June 28 or did he remain aboard after June 28?

A. Remained aboard.

Q. What about June 28 until the time he left the ship?

A. Until the time he left the ship?

Q. Yes.

A. No overtime.

Pg. 121:

Q. What did you do with the seamen's books of each of these men that have used your ship?

A. Of the three men that left the ship here, I re-

turned their seamen's books to them. The five men who left in Rotterdam I turned their books over to the police and to the Consul.

Q. One of these men who has testified stated that you hit him and beat him up. His name was Dimitrios Kyriacos. I'll ask you whether or not you or any one else in your presence ever beat this man?

* * * *

A. I did not hit him or beat him up. No one in my presence did. I only heard in Bahia Blanca he got into a fight with someone else.

Q. Do you know who he got into a fight with?

* * * *

A. The ship's carpenter.

Q. He also said that he had to lock himself in his room to keep you and some of your relatives from beating him up. Is that true or not?

Pg. 122:

A. No, it is not true.

Pg. 280:

Q. Captain, do you know the custom on Greek ships with regard to the payment of money to the crew?

* * * *

A. Yes, I know.

Q. What is the custom?

Pg. 281:

A. At all the foreign ports we give money to the crew.

Q. What do you base that knowledge on?

A. To the custom that they have on the Greek steamers.

Excerpts from Trial Proceedings (pp. 32-42; 57-63):

Testimony of WAYNE B. CHAUNCEY, called as a witness by and on behalf of the respondents, having been duly sworn, testified as follows:

EXAMINED BY MR. JOHNSTON:

Q. State your full name.
A. Wayne B. Chauncey.
Q. What is your age?
A. Forty-six.
Q. Where do you live, Mr. Chauncey?
A. Newport News.
Q. What do you do?
A. Employed by C. H. Sprague & Son.
Q. Was C. H. Sprague & Son the agent for the steamship DIRPHYS when she was in this vicinity in July of 1948?
A. Local agents.
Q. Local steamship agents?
A. Local steamship agents.
Q. What was the first time that you saw anyone from aboard the DIRPHYS?
A. The morning of July 12th, when Dimitrious Kyriacos came in the office—the second officer from the ship.
Q. Was he a seaman aboard the ship?
A. Yes sir, second officer.
Q. What did he have to say when he came into your office?
A. Well, he was talking about everything, and he had a medical hold from the Quarantine.
Q. Had the ship been in quarantine at that time?
A. Yes, sir; and he wanted to go to the hospital in

Newport News, and I said it was impossible, the best thing for him to do was to go back to the ship and let the captain put him in the Marine Hospital.

Q. What did he say that medical hold was for?

A. V.D.

Q. What does that mean?

A. Venereal disease.

Q. Now, was Kyriacos sent to the hospital, or not?

A. Yes, sir.

Q. Do you know when he was sent to the hospital?

A. Yes, sir. I have some notes here if I may read them to you.

Q. Were these notes that you have there made around the time that this incident occurred?

A. Yes, sir.

Q. When was he sent to the hospital?

A. July 12th.

Q. What year?

A. 1948.

Q. And by whose order?

A. By the Immigration and Public Health.

Q. Do you know when Kyriacos left the hospital?

A. Yes, sir; the 16th of July, 1948.

MR. J. L. MOREWITZ: I object to this witness testifying as to when the man left the hospital unless he knows. Just because he has some paper he is reading from doesn't make him know it.

THE COURT: Let's see how he knows.

BY MR. JOHNSTON:

Q. How do you know that?

A. When these men are put in the hospital, we send a letter authorizing the hospital to draw on us for all bills

that they have, that we will be responsible for them, and in this particular case he had a medical hold and he was held in the hospital until the immigration guard that we employed went down there and picked him up and carried him to the Immigration to be released, since he was both a medical hold and an immigration held—a detainee, in other words.

BY THE COURT:

Q. When did you say he was released?

A. On the 16th of July.

Q. How did that come to your knowledge?

A. Well, the hospital gives the seaman a discharge slip, from the United States Marine Hospital, and in turn, these chaps usually, like in this particular case, turn them over to us.

Q. He brought it to you?

A. Yes, sir.

Q. Did Kyriacos bring this one to you?

BY MR. JOHNSTON:

Q. Tell me what hospital you are referring to when you say he went in on the 12th and was released on the 16th?

A. The United States Marine Hospital in Norfolk.

Q. When did you see him again?

A. I saw him the afternoon of July 16, the day he was released from the Marine Hospital.

Q. And where did you see him?

A. In my office.

Q. Where is that?

A. Newport News.

Q. What did he say with regard to his condition at that time, if anything?

A. He still wanted to be hospitalized. He was not satisfied being in the Marine Hospital; he wanted a private hospital.

Q. What did you do at that time?

A. Well, I called my doctor and sent the man to Dr. Windley. That was at Newport News at that time.

Q. Do you know whether or not Kyriacos was again hospitalized in Newport News?

A. Yes, sir; he was hospitalized at the Buxton Hospital on the 17th of July.

Q. 1948?

A. Yes, sir.

Q. Do you know the reason for that hospitalization?

A. Well, Dr. Windley couldn't find anything wrong with him, so I sent him out there for observation and called in two specialists, Dr. Phillips, of Newport News, and also Mr. Warren Sayer, and Dr. Warren Sayer operated on him for appendicitis.

Q. When, if you know, was Kyriacos released from the Buxton Hospital in Newport News?

A. He was released on July 26.

Q. What year?

A. 1948.

Q. Did you see him after his release from the hospital?

A. Yes, sir. He came back to my office.

Q. What, if anything, was paid to Kyriacos for the time he was in the hospital, both in Norfolk and in Newport News?

* * * *

A. We gave him his base pay from the time he was entered in the Marine Hospital until he came out of the

Elizabeth Buxton Hospital. That made a total of fifteen days and we paid him the sum of $36.

Q. Was that his base wage alone?

A. Yes, sir, his base wage.

Q. When he got out of the Buxton—

BY MR. JOHNSTON:

Q. When he got out of the Buxton Hospital, what, if any, time was given him for convalescence?

A. Dr. Sayer gave him fourteen days' recuperation period.

Q. Was there anything paid to the man for that time?

A. Yes, sir.

Q. What was paid him?

A. I paid him $77 for fourteen days, plus the money he spent coming back and forth to Norfolk, a total of $10, or I paid him the sum of $123.

BY THE COURT:

Q. That was plus what?

A. I gave him $77 for his recuperation pay, we call it, when the doctor lets a man stay out of the hospital so-many days.

Q. You said plus something.

A. Plus $10 transportation back and forth to Newport News, and he claimed—I imagine he spent several dollars for meals.

BY MR. JOHNSTON:

Q. Breaking that $77 payment up, what did you pay him a day for the fourteen days of convalescence that he was given?

A. $5.50 per day.

Q. All right. Now, when was the first time that you saw Sfekas?

A. Well, that chap—the first time I saw him was in my office. He was brought there by the Greek union delegate that we had in Newport News at that time and he was acting as interpreter for him, and he was claiming that he was sick and ill and had to go to the hospital, so I sent him—

Q. Just a minute. Before he came to your office, do you know whether or not he had been seen by any doctor?

A. I am pretty sure he had been seen in Norfolk.

Q. I don't want you to be pretty sure; do you know of your own knowledge whether he had been seen by any other doctor?

A. Not to my knowledge, except a receipt from a Dr. Vorbrink, over here.

Q. What did you do when he came into your office complaining through the interpreter that he had been sick?

A. Sent him to my doctor, Dr. Windley.

Q. Do you know what Dr. Windley did with Sfekas?

A. Yes, sir; he immediately put him in the Elizabeth Buxton Hospital.

Q. What doctors, if any, examined Sfekas after he was put in the Elizabeth Buxton Hospital in Newport News?

A. Dr. Phillips and Dr. Hankins.

Q. Did you receive any report as to their conversation concerning the man?

A. Yes, sir, a medical report from Dr. Hankins.

Q. And what was the statement as to the condition of this Sfekas?

A. According to Dr. Hankins, it was no emergency

at all about the chap, and he said no further hospitalization was necessary, or "indicated," as he mentions in his report.

Q. As a result of that hospitalization in Newport News in the Buxton Hospital, what, if anything, was paid Sfekas for the time that he was in there?

MR. J. L. MOREWITZ: The same objection.

THE COURT: The objection is overruled.

A. He stayed in the hospital nine days and I paid him $21.60; and, besides that, he was not even satisfied with being in a room with another chap in the hospital, and I paid him $11.25 for a private room for him while he was a patient out there.

Q. What was the payment that was made to him after his discharge from the hospital?

A. I gave him $21.60 as his base pay, plus $5.00 for transportation to Newport News the day that he came over.

Q. When was he discharged from the Buxton Hospital?

A. The 23rd of July, 1948.

Q. When was the next time after you paid him that you saw this man, if you saw him again?

A. Yes, sir, I saw him again around the 15th of August.

Q. What was the occasion for your seeing him then?

A. Well, I had a call from Mr. Morewitz that day that the man was back in town with a certificate from two doctors, or two certificates from two different doctors in Baltimore that the man needed hospital attention.

Q. Did you see the man himself on that day?

A. Yes, sir. Mr. Morewitz sent him down to my office with an interpreter.

Q. What did you do when he came to your office with the interpreter?

A. Well, I immediately got hold of my doctor and my doctor certified him to the Elizabeth Buxton Hospital again.

Q. When was that that he went into the hospital again?

A. Pardon me, Mr. Johnston. I am mixed up on that. I called in Dr. Windley on this chap and he said that —

Q. Was this on the 5th?

A. Around that time—since the man had been in the Buxton Hospital, he would suggest that he be sent to the United States Marine Hospital in Norfolk.

Q. Was he sent there?

A. Yes, sir, and the letter was addressed to the officer in charge of the Marine Hospital in Norfolk and the letter given to the patient to take with him.

Q. By whom?

A. By me.

Q. Do you know when he entered the hospital in Norfolk?

A. Yes, sir. I gave him the letter on, I think it was the 5th, August 5, and he didn't enter the hospital until August 10, and he stayed there until August 25, at which time he was discharged.

Q. All those dates being in 1948?

A. 1948, yes, sir.

Q. Now, after his discharge from the hospital the second time (from the Norfolk Marine Hospital), what, if anything, was he paid?

A. I gave him $36, which represented fifteen days, his base pay while in the hospital.

Q. Do you remember having any further contact with the man?

A. No, I don't, Mr. Johnston.

MR. JOHNSTON: That is all.

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Q. Now, this letter of August 5, addressed to the officer in charge of the Marine Hospital, with regard to Sfekas, you say this man was discharged from the vessel by the master for medical attention, and you go on to say about Dr. Windley and you wind up the paragraph by saying that this seaman is being entered by authority of the Immigration Service and that the expenses in connection with the hospitalization will be paid by you as agents for the vessel.

A. May I read that whole letter out?

Q. Yes, sir.

A. This is the letter that we wrote after the man came to our office:

> "This man was discharged from the said vessel by the master for medical attention. We had Dr. Windley examine him and he called for two other doctors while the man was a patient at the Buxton Hospital from July 18 to 23, 1948. Nothing serious was found. However, after the man was discharged, he went to Baltimore and secured two certificates which we are attaching,"

and I sent those two certificates over with this letter, and he was entered at the hospital. This letter was written August 5, but the man did not go to the hospital until the 10th, I believe, of August.

Q. So, all you paid him for after he got out was the actual days he was in the hospital?

A. I paid him according to the—whatever that slip

that the Marine Hospital gives each seaman when he is discharged from the hospital.

Q. Have you become familiar with the Collective Agreement, which provides for the pay that these men shall receive during the time that they are laid up by agents in the hospital or otherwise?

A. At that time we had the Collective Agreement in the office and we used their base pay, figured in pounds Sterling, which we re-figured in American money, $4.03.

Q. Does the contract say that all they are entitled to is the base pay?

A. I don't know, Mr. Morewitz. That is one page where they give you the base pay.

Q. As a matter of fact, if you had the Collective Agreement, you know from reading it, that it covers the four months that the man is ashore by reason of illness, if it is some matter that the ship is not responsible for, don't you?

A. I don't know about that.

Q. Here is one that you got Sfekas to sign, again, on August 26, 1948, which says:

> "I also state that I have no further claim of any nature whatsoever from captain, ship, owners, or from any insurance company, with the exception of twenty-one days' maintenance at $5.50 per day which shall be payable weekly as accrued, from August 26 to September 15, 1948."

Why did you put that in there? That is a little variation from the other one.

A. Well, he got maintenance pay there.

Q. Why was he entitled to it and not the other one?

A. Because he was released from the Elizabeth Buxton Hospital with the medical report from Dr. Hankins.

Q. In the other one, as I read you before, "I also

state that I have no further claim for compensation in connection with the above hospitalization." Why did you go into detail in this one of August 26 when you had not done anything of the sort in the one of July 24?

A. According to Dr. Hankins' report, this man was finished as far as his hospitalization was concerned.

Q. So, it didn't make any difference to you whether a suit was pending or not, you were going to get this release from him?

MR. JOHNSTON: If Your Honor please, I object to that.

THE COURT: The objection is sustained.

BY MR. MOREWITZ:

Q. Why couldn't you just take a receipt for the amount of money you gave him, instead of endeavoring to prejudice the man's rights, if that was your purpose?

A. Well, I tried that, and every week the men were coming back in the office for more money, more money, and I had to find something to stop them from coming in the office.

Q. You don't claim that anybody was present with Sfekas this last time, do you?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. Then, why didn't you put in your certificate that there was a witness present?

THE COURT: Mr. Morewitz, there isn't any use going into that. That doesn't help the Court a bit.

MR. MOREWITZ: All right, sir. I save the point.

By Mr. Morewitz:

Q. Do you have a similar file on Kyriacos?
A. I have a similar file.
Q. Well, we ask you to produce that now.

Mr. Johnston: Objection, Your Honor, the same as we had to the last one. If it is going to be introduced, we would like to file the whole thing in evidence.

The Court: Look through it and see if there is anything you object to.

Mr. Morewitz: Your Honor understands we are not filing anything. They can introduce it. We have a right to cross examine him on it.

The Court: All right, sir.
Gentlemen, I want to finish this case today.

Mr. Morewitz: It is agreeable to us, sir.

By Mr. Morewitz:

Q. Now, I notice in this file that you have an order of detention for Evangelos Liaskos, the chief cook. You didn't testify in regard to that at all, did you?
A. No, sir. I don't know anything about that chap at all.
Q. It says on the face there that he was not on the visaed crew list.

The Witness: That is correct, isn't it?

Mr. Johnston: That is right. The respondents concede he was not on the visaed crew list, and the correction was made.

Mr. Mosowitz: But a record of it was never produced.

The Court: They don't have to produce it, it is conceded.

Mr. Mosowitz: All right, sir.

By Mr. Mosowitz:

Q. Now, you have a cash receipt, and then you have a declaration here in which you use the same language with regard to Kyriacos on July 24, 1940, as you did, in effect, with the third engineer, in which you pay Kyriacos a total of $125. Now, you state there:

"I also state I have no further claim of any nature whatsoever upon the captain, ship, owners, or from any insurance company."

When you put that in there you knew that it was not so, didn't you? You knew he did have claims and you knew they were the subject of the ship's being attached and you knew you were to give a bond of $25,000 to cover his claims?

Mr. Jamerson: I object to that, if Your Honor please.

The Court: That is the same thing you went through with as to Stokas. He said he puts that in there as a customary form, that the reason he does it is to prevent repeated visits by the seamen.

By Mr. Mosowitz:

Q. You know Kyriacos pretty well by now, don't you?
A. Yes, sir, I certainly do.

Deposition of George Georgilis (Pg. 331):

Q. State your name, sir.

A. George Georgilis.

Q. Are you the Chief Engineer of the Steamship DIRPHYS?

A. Yes, of the Steamship DIRPHYS.

Q. How long have you served as Chief Engineer of that steamship?

A. From February, 1947.

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Mr. Jonxson: I hand this to the reporter and ask him to mark it for identification.

The book was received and marked Respondents' Exhibit "M" for Identification.

Mr. Jonxson: This is the book he indicated is his person book he kept on the overtime hours of each of the members of the engine room crew.

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Q. Now Chief, this man Pagonis, will you look at the original entries you have in your book and tell me how many hours of overtime you credited him with before he left the ship in Rotterdam? Don't get it from the photostat. Get it from the original entry. I want you to read it from the day by day entry and total it.

A. I have here inscribed that the fireman, Michael Pagonis received 158 hours and $6.00 for tubes and I forgot to add here four pounds and ten shillings which he should have received for one month that was missing. There was a missing fireman.

Q. Now in other words, you concede now that in this memorandum that you made up for the ship's lawyer you overlooked this item of four pounds, 10 shillings

that was due Pagonis for wages of a missing fireman, is that correct?

A. I made a mistake; to add to his account four pounds and ten shillings because his account was made at sea and the Captain called me and I made — I was in a hurry to make his account and forgot when Pagonis was not aboard the steamer.

Q. When did you first discover you made that mistake?

A. Today.

Deposition of C. N. Clinia (Pg. 3):

Q. You are Dr. C. N. Clinia?

A. Yes.

Pg. 4:

Q. What is your business, Dr. Clinia?

A. I am a Greek lawyer.

Q. And how long have you been a Greek lawyer?

A. I am practising since 1928.

Q. What courts are you qualified to practice in, in Greece?

A. In all the Greek courts in Athens and Piraeus, and the two highest courts of Final Degree in Athens.

Q. As a Greek lawyer are you or are you not familiar with the Greek Mercantile Marine laws?

A. Yes, I am familiar.

Q. I am going to ask you whether a Greek seaman would be entitled to a long service bonus for a period of

service beginning in September of 1947 and ending in March of 1948?

A. No; he does not – he wouldn't even complete four months' service up to November 30, 1947.

Q. Why do you say that?

A. Because the long service bonus had been agreed on in Clause C of the Collective Agreement of September 2, 1943, and in the terms of that clause itself it has ceased to be due on the liberation of Greece, which was about the end of September 1944, and subsequent decisions

Pg. 5:

of the Greek courts of the year 1946 denied the payment of a long service bonus. That long service bonus has been revived by an additional Collective Agreement which was drafted on November 29, 1947, which has been revived as from the liberation of Greece to November 30, 1947, and it was ruled by that additional agreement that it would cease definitely as from November 30 or December 1st, 1947.

Pg. 6:

Q. I hand you this paper and I ask you what it is?

A. This is a photostatic copy of the Collective Agreement of September 2, 1943.

Q. Does that photostat contain both the Greek and the English translation?

A. Yes.

MR. JOHNSTON: I ask that it be marked Respondent's Exhibit A of January 18, 1949.

Marked "Respondents' Exhibit A for Ident. Jan. 18/49, ECT."

Q. Now you testified that a man under that Collective Agreement must serve at least four months before he becomes entitled to a long service bonus. Will you

point to the particular section of that agreement and identify it for the record?

A. It is Clause C, paragraph 2, sub-paragraph (c).

Q. Now, suppose a man worked from September

Pg. 7:

of 1947 to April of 1948, would he be entitled to a long service bonus?

A. No. The answer is the same as before.

Q. You mentioned a moment ago the new Collective Agreement of November 1947. Have you a copy of that or a translation of that?

A. This is a translation of that (referring to paper).

Q. And describe that paper that you have there?

A. It is a photostat of three pages containing the translation of the Special Collective Agreement.

Q. Is that a true translation of that Collective Agreement, that Special Collective Agreement?

A. Yes, I have made it myself; and one page is the decision of the Minister of Merchant Marine ratifying on the same date that agreement.

Pg. 8:

Q. (repeated) What does this paper which you say is a proper translation of the new Collective Agreement of 1947 provide with regard to long service bonuses?

A. It provides that the long service bonuses under sub-paragraphs (b) and (c) of the original Collective Agreement we mentioned before, includes same will be payable until the 30th of November, 1947; and it settles also the definite turning over of such bonuses which may have been held by the Consular authorities pending dispute on that matter, to the seamen.

Excerpts from Deposition of Giakoumis (pp. 8-9):

"Q. What happened in Panama. What if anything happened in Panama?

A. We asked to be paid off in Panama because it was overdue, all the crew we asked to be paid off because it was overdue the payment.

Q. The captain pay you all that was due you?

A. About, he gave us a sum about – whatever was due us.

Q. Did you receive any more money than was due you or any less or the amount that was due you?

A. I received less money than was due me."

Excerpts from Deposition of Liaskos (p. 20):

"Q. After February 8, the date when you received this money, that you said you got when you signed on, that was $250.00, when did you next get any money?

A. After I worked for the money. I received money in Argentina. Then I started to get money, whatever money I have worked for, not in advance.

Q. And after that time, you worked for money before you got it?

A. Yes, I was receiving money against my account. I did not settle the account."

Excerpts from Deposition of Kyriakos (pp. 39-40):

"What was the rate of pay you received on board the ship?

A. $212 a month.

Q. What money did you get?

A. I got some advances. $100 in advances.

Q. When and where did you get this money?

A. On the 9th of February, 1948, when I embarked from here they gave me $200.

Mr. Johnston: Is that in Newport News?

Mr. B. Morewitz: Yes.

A. And four months later they gave me $500 at Cristobal, Panama."

Excerpts from Deposition of Sfekas (p. 85):

"Q. Now, you stated that these libellants demanded their wages at the Canal Zone? Is that correct?

* * * *

A. Yes.

* * * *

Q. Had the wages been earned at the time that you requested payment?

A. Yes, because from the time we left the United States until we got to the Canal, four months, we had not received any pay whatsoever. . . ."

Withholdings daily dr. 2370 x 20000=£ 0-2-4
Evanghelos Liaskos Cook Wages £ 36

Wages commence from Feb. 9-48 until July 13-48 Daily £ 1-4

Advance dollars 250)	£ 62-10-0
cigarets 3000x17½) (s) E. Liaskos	2-12-6
Bahia Blanca pesos 200 (s) E. Liaskos)	
Bahia Blanca pesos 300 (s) E. Liaskos)	49-14-0
for his teeth pesos 100)	
Bahia Blanca 200 (s) E. Liaskos)	
Cigarets 2000	2- 6-8
Tocopila pesos Chile 200 (s) E. Liaskos)	
Tocopila pesos 150 (s) E. Liaskos)	2-04-0
Panama dollars 400 (s) E. Liaskos	100-00.0
	£ 219-07-2
Less expenses from NY to Newport News with Kouloubaritsis dollars 38	9-10-0
	209-17-2
Cigarets 1000	1- 5-0
Total	211.02-2.
Withholdings for 5 mon. & 5 days x 2370 daily) =£0-2-4 drs 363.240 x 20000 the pound)	17-15-4
Total withholdings	£ 228-17-6
Wages for 5 m and 5 d x £36 daily £1-4	£ 186. 0.0
Overtime for 525 hrs x two sh.	52.10.0
Breadmaking for 5 m and 5 ds	51.13.4
Traveling expenses return N. York dol 12	8.
For Breadmaking at various ports	5.
Total of his earnings	£ 298.03.4
Subtracted withholdings total	228-17-6
Balance to receive	£ 67.65.10

Paid at Norfolk the 13th July 1948

The receiving
(s) L. Liaskos

Wages Apprentice Captain £ 28 from June 25-48 daily £ 0-18-8
Zaharias Kyriakos 2nd Mate Wages £ 52-10

Wages 2nd Mate from Feb 9-48 until June 27-48 daily £ 1-15

Advance Newport News Dollars 200	£ 50-0-0	£ 50 0 0
Bahia Blanca 200 pesos (s) Kyriakos cigarets american 3000	2-12-6	2. 12-6
Bahia Blanca 100 pesos (s) Kyriakos		
Bahia Blanca 100 pesos (s) Kyriakos	31- 1-2	31. 1.2
cigarets 2000	1-15-0	1- 15.0
Panama 500 dollars (s) Kyriakos	125- 0-0	125. 0.0
	£ 210-08-8	£ 210-08-8
Bahia Blanca fine	1-0-0	1- 0-0
telegram 7200 drs x 25.000	5.9	5.9
cigarets 1000	1- 5-0	1. 5-0
Total	£ 212-19-5	£ 212.19.5
withholdings as 2nd Mate for 4.19 ds x 5-14-6 monthly daily £ 0-3-10	26 10 6	
withholdings as apprentice Captain for 16 days x £ 2-15-4 monthly daily £ 0 1 sh 10 p.	1 9.6	
	£ 240-19.5	

Wages 2nd Mate from Feb 9/48–6/27/48 wages as 2nd Mate for 4-19 days £ 52-10 monthly daily £ 1-15	)))	£ 242- 0- 5
wages apprentice Captain from 6/28/48 to 7/13/48 days 16 x £ 0-18-8 daily	)	£ 14-18- 8
Overtime days 17½ x sh 2.9		£ 2 8 1
		259 07 2
Total withholdings and advances		240 19 5

Balance to receive	£ 18-17-9
received dol 10 for doctors visit at Bahia Blanca	2.10
	£ 21.07.9

Paid at Hampton Roads the 13th July 48
The receiving discharged as sick
being paid until the 13 July -48
(s) Z Kyriakos

As Apprentice Engineer from June 24-48 sh. p.
Wages Apprentice £ 28 monthly daily sh. 18.8
Panagiotis Sfekas 3rd Engineer Wages £ 52-10
as 3rd Engineer from Feb 9-48 to June 24/48 Daily £ 1-15

	£ sh. p.
Advance Newport dollars 300 (s) P. Sfekas	75. 0. 0.
cigarets 3000 x 17½ (s) P. Sfekas	2.12. 0.
Pesos B. Blanca 300 (s) P. Sfekas	
B. Blanca 50	21.14. 9.
cigarets 2000	1.15 .0
Panama 500 dollars (s) P. Sfekas	125. 0. 0
	£ 226-02- 3
Cigarets Panama 1000	1-05. 0
	227. 7. 3
withholdings as 3rd Engr for 4 mon. 16 ds. drs daily 3817	24 16 4
withholdings as App. Engr for 19 days drs daily 1843	1.14.10
	£ 253.18.5

	£ s. p.
Wages as 3rd Engr. for 4 mo. 16 ds.	237.0 0
wages as App. Engr. for 19 days	17 14 8
Total of his wages	254.14.8.

Overtime 350 x sh 2.9 =	48. 2.6
Added ¼ of total wages sum pounds 66-12-4 for missing apprentice engineer for 79 days	16.13.0
	319.10.2
Subtracted withholdings withdrawals	£ 253 18 5
Balance to receive	£ 65.11.9.

Received Payment Hampton Roads July 13-48
The receiving
(s) P. Sfekas